IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2002 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHANDRIKABEN R. PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

==========

Appearance :
MS HARSHAL N PANDYA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 3, 5,
MR HS MUNSHAW for Respondent(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/07/2006

ORAL JUDGMENT

1. In the present petition, the petitioner who is a retired employee of the Panchayat service has prayed for pensionary benefits and other retiral

benefits considering her past service rendered by her in Sarvoday scheme.

2. Facts which are not in dispute are as follows:

2.1 The petitioner was initially appointed as Junior Clerk-cum-Typist on adhoc basis by the order dated 13.8.79 in the Sarvoday scheme run by the State Government. The petitioner was confirmed on the said post on 27.2.80. Subsequently, the scheme itself was abolished by the Government by the resolution dated 18.7.80. There were large number of employees of the scheme who had disputes about their status on account of the Government winding up the scheme. Some of the issues reached this Court and finally by way of an agreement between the employees and the Government, certain provisions were made to absorb them in the Panchayat service. Accordingly, the petitioner was absorbed in the ex-cadre post under the Panchayat service by the order dated 31.8.81. the petitioner duly joined the service. The petitioner was in due course of time absorbed in the regular cadre by Government resolution dated

15.12.87.

2.2 While in Panchayat service on permanent basis, the petitioner on account of her personal reasons, namely that of the illness of her mother was not in a position to continue in service. The petitioner, therefore wrote a letter dated 1.12.04 seeking voluntary retirement from service. This request was, however, turned down by the District Panchayat noting in its letter dated 15.12.04 that the petitioner has not put in sufficient number of years of pensionable service and that therefore, her request for voluntary retirement cannot be granted. The petitioner, therefore, wrote another letter dated 16.12.04 to the Panchayat Authorities. She suggested that certain other similarly situated employees have got the benefit of counting past service rendered in the Sarvoday scheme for the purpose of pensionary benefits and the petitioner keeping the said right open tenders her conditional resignation. Apparently, the Panchayat by letter dated 11.1.05 refused to accept the conditional resignation of the petitioner. The petitioner,

therefore, in her letter dated 12.1.2005 agreed to delete the condition and requested that her resignation be accepted with immediate effect. This resignation was accepted by the District Development Officer, Gandhinagar by the order dated 20th January 2005.

3. On the basis of these factual parameters, the petitioner claims that she should be given the benefit of the past service rendered in the Sarvoday scheme and that she should be made entitled to pensionary benefits. When the request of the petitioner was turned down by the authorities in this regard, the petitioner has filed the present petition challenging the impugned orders dated 15.12.04 an 20.1.2005 by which the respondents were not ready to accept the conditional resignation of the petitioner and eventually accepted the same upon the petitioner withdrawing the condition.

4. In the nutshell the case of the petitioner is that all along she desired to retire on voluntary retirement basis and only when her

request was not granted that she was compelled to tender her resignation. It is her case that it was impossible for her to continue in service on account of the ill-health of her mother. Other similarly situated employees have been granted the benefits of past service and if the same was added to the length of the services of the petitioner, she would have completed the qualifying period of service permitting her to proceed on voluntary retirement basis.

5. In so far as the claim of the petitioner for considering past service rendered by her in the Survoday scheme for the purpose of retiral benefits is concerned, issue is no longer res integra. In series of decisions of this Court, such employees were held entitled to count past services for pensionary and other benefits. The petitioner has placed on record one such order passed by this Court on 9th March 2006 in Special Civil Application No.6992 of 2002 and connected matters. This was on the basis of the earlier orders passed by several Benches of this Court. Therefore, in so far as the case of the

petitioner for considering her past service rendered by her in Sarvoday scheme for the purpose of her benefits upon cessation of service is concerned, the same is required to be accepted.

6. The claim of the petitioner for pension, however, cannot be granted. As noted earlier, though the petitioner initially shown her desire to accept voluntary retirement, such request was turned down by the administration. Whatever reason, the petitioner, therefore, tendered her resignation which was conditional. Obviously, legally, since conditional resignation cannot be accepted, the administration was justified in rejecting the request of the petitioner in this regard. Thereupon, the petitioner tendered unconditional resignation by the letter dated 12th January 2005. This resignation was accepted by the District Development Officer on 20th January 2005. It has been held by the Hon'ble Supreme Court in number of decisions that resignation and retirement cannot be equated for the purpose of claiming pensionary benefits.

Reference in this regard can be had in the decision of Hon'ble Supreme Court in the case of UCO Bank v. Sanwar Mal, reported in (2004) 4 SCC 41.

7. The petitioner, therefore, cannot claim pensionary benefits from the respondents despite the addition in the length of her service as held hereinabove. Whatever other benefits which the petitioner is entitled to receive, such as, gratuity, provident fund, etc. if payable upon resignation shall be calculated and paid over to the petitioner. As provided in the earlier orders, this shall not carry interest.

8. In the result, the petition is partly allowed. The past service rendered by the petitioner in Survoday scheme shall count for the purpose of benefits that the petitioner is entitled to receive upon resignation. All benefits on this basis shall be calculated and arrears if found payable be paid to the petitioner. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. With these directions the

petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)